

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 229 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BABULAL S PANDYAAppellant

Versus

Gujarat Electricity BoardRespondent

Appearance:

MR PV HATHI for the appellant
MR MD PANDYA for the Respondent

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 22/12/2000

ORAL JUDGEMENT

1. Being aggrieved by the judgement and decree dtd.
18th November, 1981 passed by the then learned Joint
District Judge at Mehsana in Regular Civil Appeal No.131
of 1980, dismissing the appeal with some modification and
confirming the judgement and decree passed by the then

learned Civil Judge (J.D.) at Kalol on 29th February, 1980 in Regular Civil Suit Nos.209 of 1972 and 145 of 1976 directing the appellant to pay Rs.3832.44 ps. in all with cost and interest, the original defendant has filed this appeal.

2. Necessary facts leading the present appellant to prefer the present appeal may in brief be stated. The appellant for the purpose of agricultural operations in the field, took electric connection from the respondent entering into the agreement. He agreed to pay the minimum charges for seven years and also tariff rates prescribed by the respondent. The agreement was made effective from 27th March, 1967, the date on which the electric connection was given to the present appellant. For some time, the appellant paid the required charges and thereafter neglected to make the payment. His electric connection was temporarily cut-off in July, 1972. In spite of such temporary disconnection, the appellant did not make the payment of the minimum charges, he was required to pay under the agreement. A notice was then served upon him calling upon him to pay the amount, he was under contractual obligation to pay. He did not pay any heed to the notice, with the result, the respondent was constrained to file the above suits in the trial court. The appellant appeared before the trial court and resisted the suits filing written statement. The then learned Civil Judge (J.D.) at the conclusion of the hearing, appreciated the evidence before him and passed decree in favour of the respondent in Regular Civil Suit NO. 290 of 1972 directing the appellant to pay Rs.1678.69 ps., and also the decree in Regular Civil Suit No.145 of 1976 directing to pay Rs.2153.75 ps. with cost and interest. Feeling aggrieved by such judgement and decree, the appellant preferred Civil Appeal No.131 of 1980 in the Court of District Judge at Mehsana. The same was assigned to the then learned Joint District Judge at Mehsana, who hearing the parties, dismissed the appeal with the only modification in the decree passed in Regular Civil Suit No.290 of 1972 to the effect that instead of sum of Rs.1678.69 ps., the appellant was directed to pay Rs.1622.69 ps. The appellant, not satisfied with the decree, has preferred the present Second Appeal calling in question the legality and validity thereof.

3. The learned advocate representing the appellant submits that so long as the judgement and decree passed by the lower appellate court, are concerned, the same are not at all consistent with law applicable. When the appellant had not consumed the electric energy, the

contract in question was frustrated and therefore the appellant was not bound to pay the minimum charges. The appellant was helpless in using the energy because there was no water in the well and when it was beyond his control to use the electric energy, he in fact did not consume the energy as a result the contract entered into came to be frustrated.

4. The learned advocate representing the otherside submits that irrespective of the use of the energy, for whatever may be the reasons, the contractual obligation subsists and one cannot escape of the agreement entered into. As per the agreement, the appellant agreed to pay minimum charges regardless of his ability or position to consume energy. The Board had incurred heavy expenses in laying the line upto the well of the appellant for which minimum charges are claimed and consumer has to pay even if he uses no energy. The agreement has to be esteemed. The decree passed was, therefore, in consonance with law and same is required to be maintained.

5. It may be stated that there is no dispute about the fact that the contract to pay the minimum charges is entered into. What is submitted is that the contract is frustrated and liability to pay came to an end. At the time of admission of this appeal, in view of such facts, the only question for adjudication formulated was whether in the facts and circumstances of the case, there is frustration of the contract and the appellant is immuned from making payment of minimum charges. This only question, therefore, arises for consideration in this Second Appeal. Both the learned advocates have at length contended in favour of one's-own stand, but it is not necessary to deal with the same at length, as the whole appeal can be disposed of in view of the recent judgement of the Supreme Court exactly applicable to the point that arises for consideration. In the case of Bihar State Electricity Board and anr. vs. UMI Special Steel Ltd., 2000 AIR SCW 4035, when a similar question was posed before the Apex Court, it is held that whenever the contract for supply of the electric energy is entered into, the consumer has to pay minimum charges, evenif no energy is consumed during the subsistence of the contract. In view of such decision, the appellant cannot escape of his contractual obligation to pay the minimum charges, evenif it was beyond his control to consume electric energy for want of water in the well. In view of the decision of the Supreme Court, the agreement to pay minimum charges so long as it remained in force, is not frustrated because of no water in the well. The charges claimed are relating to the period when the

contract remained in force. The appellant is, therefore, bound to pay the minimum charges. In view of such law, the decree passed by the courts below being in consonance with law, is required to be maintained.

6. For the aforesaid reasons, the appeal being devoid of merits is required to be dismissed and is accordingly dismissed with no order as to costs.

(H.R. SHELAT, J.)

Rafik